All Nippon Airways Co Ltd v Tokai Marine & Trading Co Ltd

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-04–117 OF 2011
LOW HOP BING, ALIZATUL KHAIR AND MOHTARUDIN BAKI JJCA
22 JUNE 2012

Contract — Liability — Agent — Carrier's liability — Plaintiff's cargo damaged when it was under control of defendant's agent — Whether carrier's liability was governed by the Carriage by Air Act 1974, which incorporated the Warsaw Convention — Whether defendant/carrier was responsible for damage to cargo — Whether plaintiff/consignor was entitled to issue notice of intention to claim for damages — Whether defendant's liability as carrier was limited to RM48 per kg — Carriage by Air Act 1974 — Convention for the Unification of Certain Rules Relating to International Carriage by Air articles 22(2)(a) & 26(2)

All Nippon Airways Co Ltd, the consignor ('the plaintiff'), had sent a consignment of 30 cartons of fresh tuna fish ('the cargo') by air to Kuwatanatoukaimutu Co Ltd ('the consignee') in Japan. MAS Kargo, the defendant's ground handling agent ('the defendant's agent') had received the cargo in good condition. While the cargo was under the care and control of the defendant's agent, part of the cargo, namely 20 of the 30 cartons, was crushed and damaged and became unfit for human consumption. Consequently the plaintiff could only bill the consignee in Japan for the 10 cartons that were intact instead of the entire 30 cartons. The plaintiff's loss arising from the damaged cargo led to the plaintiff sending the defendant a notice of intention to claim for damages ('the notice') under article 26(2) of the Convention for the Unification of Certain Rules Relating to International Carriage by Air ('the Warsaw Convention'). This led to the plaintiff commencing legal action against the defendant and obtaining judgment in the sum of RM198,144.16 with interest and costs in the sessions court. On appeal the Judicial Commissioner ('the JC') affirmed the sessions court judgment. The defendant has now appealed to this court to either wholly repudiate or limit the plaintiff's claim. This appeal is based on two questions of law, namely whether the defendant's liability was governed by the Carriage by Air Act 1974 ('the Act'), which incorporated the Warsaw Convention, to the exclusion of common law and whether the plaintiff was entitled to issue the notice, and the question of fact as to whether the defendant or its agent had caused damage to the damaged cargo. Alternatively the defendant argued that its liability was capped at the total amount of RM110,400.

Held, allowing this appeal in part with no order as to costs:

(1) The carriage of the cargo from KLIA to Japan in the present case was an

international carriage by air within the definition of article 1(2) of the Warsaw Convention, which had the force of law in Malaysia under s 3(1) of the Act. The trite principle, which may be gleaned from the case authorities, was that in any carriage by air such as the transaction in the present case, the governing law was the Act read with the Warsaw Convention, to the exclusion of common law causes of action (see paras 9–11 & 14).

(2) It was the concurrent finding of facts by the two courts below that the defendant was responsible for the damage. There was no evidence that necessitated appellate intervention of that finding of facts (see paras 15–16).

(3) The person entitled to complain to the carrier was the 'the person entitled to delivery', ie the consignor/plaintiff or the consignee. However, the plaintiff in the present case had sustained the loss or damage and was hence an aggrieved person. The plaintiff's loss arising from the damaged cargo certainly gave rise to the plaintiff's entitlement to complain and issue the notice under article 26(2) of the Warsaw Convention. This construction of the expression 'the person entitled to delivery' was consistent with commercial sense (see para 17).

(4) Under article 22(2)(a) of the Warsaw Convention, the defendant's liability as carrier was limited to a sum of 250 francs per kg unless the plaintiff/consignor had made a special declaration of interest. In the present appeal, the plaintiff had not made a special declaration of interest and the defendant's liability was thus regulated by the limit prescribed in article 22(2)(a) of the Convention read with the Carriage By Air (Ringgit Equivalent) Order 1978, which was RM48 per kg. Thus the defendant's liability was limited to the sum of RM110,400 (2,300kg x RM48 per kg). In the circumstances the JC had erred in omitting to consider or invoke article 22(2)(a) of the Convention, which constituted a non-direction amounting to a misdirection. This misdirection that occasioned a miscarriage of justice warranted appellate intervention. Consequently, the order of the High Court affirming the award by the sessions court in the sum of RM198,144.16 was set aside and substituted with the sum of RM110,400 (see paras 22, 25–27).

[Bahasa Malaysia summary

All Nippon Airways Co Ltd, pemberi konsain ('plaintif'), telah menghantar pengkonsainan sejumlah 30 karton ikan tuna segar ('kargo tersebut') melalui udara kepada Kuwatanatoukaimutu Co Ltd ('penerima konsain') di Jepun. MAS kargo, ejen pengendalian darat ('ejen defendan') telah menerima kargo tersebut dalam keadaan baik. Pada masa kargo tersebut di bawah jagaan dan kawalan ejen defendan, sebahagian daripada kargo tersebut, iaitu 20 daripada 30 karton tersebut, telah dihempap dan rosak dan tidak sesuai untuk dimakan.

Berikutan itu plaintif hanya boleh bil penerima konsain di Jepun untuk 10 karton yang masih dalam keadaan baik dan bukan keseluruhan 30 karton. Kerugian plaintif yang timbul daripada kargo yang rosak membuatkan plaintif menghantar defendan notis niat untuk menuntut ganti rugi ('notis tersebut') di bawah artikel 26(2) Konvensyen untuk Penyatuan Peraturan Tertentu Berkaitan dengan Pengangkutan Udara Antarabangsa ('Konvensyen Warsaw'). Ini membawa kepada plaintif memulakan tindakan undang-undang terhadap defendan dan mendapat penghakiman dalam jumlah RM198,144.16 dengan faedah dan kos di mahkamah sesyen. Atas rayuan pesuruhjaya kehakiman ('PK') mengesahkan penghakiman mahkamah sesyen. Defendan kini merayu kepada mahkamah ini untuk sama ada menolak secara keseluruhan atau menghad tuntutan plaintif. Rayuan ini berdasarkan dua persoalan undang-undang, iaitu sama ada liabiliti defendan dikawal oleh Akta Pengangkutan Melalui Udara 1974 ('Akta tersebut'), yang menubuhkan Konvensyen Warsaw, dengan mengetepikan *common law* dan sama ada plaintif berhak mengeluarkan notis tersebut, dan persoalan fakta berhubung sama ada defendan atau ejennya telah menyebabkan kerosakan kepada kargo yang rosak tersebut. Secara alternatif defendan berhujah bahawa liabilitinya dihadkan pada jumlah RM110,400.

Diputuskan, membenarkan sebahagian daripada rayuan ini tanpa perintah terhadap kos:

(1) Pengangkutan kargo dari KLIA ke Jepun dalam kes ini merupakan pengangkutan antarabangsa melalui udara dalam definisi artikel 1(2) Konvensyen Warsaw, yang mempunyai kuasa undang-undang di Malaysia di bawah s 3(1) Akta tersebut. Prinsip lapuk, yang boleh didapati daripada mana-mana pihak berkuasa, adalah bahawa dalam mana-mana pengangkutan melalui udara seperti transaksi dalam kes ini, undang-undang yang mengawal adalah Akta tersebut dibaca dengan Konvensyen Warsaw, dengan mengetepikan kausa tindakan *common law* (lihat perenggan 9–11 & 14).

(2) Adalan penemuan fakta serentak oleh dua mahkamah bawahan bahawa defendan bertanggungjawab untuk ganti rugi. Tiada keterangan yang memerlukan campur tangan mahkamah rayuan terhadap penemuan fakta tersebut (lihat perenggan 15–16).

(3) Orang yang berhak untuk mengadu kepada pembawa adalah 'the person entitled to delivery', iaitu pemberi konsain/plaintif atau penerima konsain. Walau bagaimanapun, plaintif dalam kes ini telah mengalami kerugian atau kerosakan dan justeru seorang yang terkilan. Kerugian plaintif yang timbul daripada kargo yang rosak tersebut sememangnya memberi hak kepada plaintif untuk mengadu dan mengeluarkan notis di

bawah artikel 26(2) Konvensyen Warsaw. Pembentukan ungkapan ini 'the person entitled to delivery' adalah konsisten dengan erti kata komersial (lihat perenggan 17).

(4) Di bawah artikel 22(2)(a) Konvensyen Warsaw, liabiliti defendan sebagai pembawa adalah terhad kepada jumlah 250 francs per kg kecuali jika plaintif/pemberi konsain telah membuat deklarasi kepentingan khas. Dalam rayuan ini, plaintif tidak membuat apa-apa deklarasi kepentingan khas dan liabiliti defendan dengan itu dikawal dalam had yang ditetapkan dalam artikel 22(2)(a) Konvensyen dibaca dengan Perintah Pengangkutan Melalui Udara (Persenilaian Ringgit) 1978, iaitu RM48 sekilogram. Oleh itu liabiliti defendan adalah terhad kepada jumlah RM110,400 (2,300 kg x RM48 sekilogram). Dalam keadaan berikut PK tersebut telah terkhilaf dalam meninggalkan untuk mempertimbangkan atau menggunakan artikel 22(2)(a) Konvensyen, yang bukan suatu arahan yang membentuk penyalaharahan. Penyalaharahan ini yang disebabkan oleh salah pelaksanaan keadilan mewajarkan campur tangan mahkamah rayuan. Oleh demikian, perintah Mahkamah Tinggi yang mengesahkan keputusan oleh mahkamah sesyen berjumlah RM198,144,16 diketepikan dan digantikan dengan jumlah RM110,400 (lihat perenggan 22, 25–27).]

Notes

For cases on agent, see 3(2) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 5143–5144.

Cases referred to

Deep Vein Thrombosis and Air Travel Group Litigation, Re [2003] 1 All ER 935, QBD (refd)

Morris v KLM Royal Dutch Airlines [2002] 2 AC 628, HL (refd)

N Balasingam v Singapore Airlines Ltd & Anor [1993] 1 CLJ 67, HC (refd)

Rolls-Royce Plc v Heavylift-Volga-Dnepr Ltd [2000] 1 Llyod's Rep 653, QBD

Sidhu and Others v British Airways plc [1997] 1 All ER 193, HL (refd)

Wai Wah Enterprises & Eastern Watch Co Pte Ltd v China Airlines Ltd [1986] 2 MLJ 269 (refd)

Western Digital Corpn v British Airways Plc [2001] QB 733, CA (refd)

Legislation referred to

Carriage by Air (Ringgit Equivalent) Order 1978

Carriage by Air Act 1961 [UK]

Carriage by Air Act 1974 s 3(1), First Schedule

Convention for the Unification of Certain Rules Relating to International Carriage by Air articles 1(2), 22(2)(a), 26(2)

Lai Wai Fong (Shearn Delamore & Co) for the appellant.
Saw Lip Hean (Saw & Co) for the respondent.

Low Hop Bing JCA (delivering judgment of the court):

APPEAL

[1] In this appeal, parties are described in their respective capacities in the sessions court.

[2] The plaintiff had obtained judgment against the defendant in the sum of RM198,144.16 with interest and costs in the sessions court.

[3] On appeal, the learned judicial commissioner ('the JC') affirmed the sessions court judgment.

[4] The defendant has now appealed to this court as the apex court. According to the parties herein, the questions of law which they are raising herein have not been ventilated in this court before, although they said that the High Court had the opportunity to address these questions previously.

FINDING OF FACTS

[5] The trial before the sessions court unveils the following facts:

(a) MAS Kargo, the defendant's ground-handling agent (the defendant's agent), received from the plaintiff 30 cartons of fresh tuna fish ('the cargo') in good condition, having been properly packed and neatly stacked on a pallet;

(b) the cargo was under the care and control of the defendant's agent. 20 cartons were crushed and damaged, with pieces of the tuna fish strewn all over the floor. Consequently, the damaged tuna fish was unfit for human consumption (the damaged cargo). The defendant had the responsibility to explain but failed to do so. The plaintiff could only bill Kuwatanatoukaimatu Co Ltd in Japan (the consignee) for the ten intact cartons.

(c) the defendant's agent issued a damage report confirming the damage and the forklift marks found on the damaged cargo; and

(d) subsequently, pursuant to article 26 of 'the Convention for the Unification of Certain Rules Relating to International Carriage by Air, as amended at the Hague 1955' (the Warsaw Convention), the plaintiff sent to the defendant a notice of intention ('the notice') to claim for damages. This led to the plaintiff's action against the defendant in the sessions

court and the said judgment entered against the defendant (a reference hereinafter to an article is a reference to that article in the Warsaw Convention).

THE DEFENDANT'S LIABILITY

[6] The defendant's learned counsel Ms Lai Wai Fong sought to either wholly repudiate or limit the plaintiff's claim. She submitted that:

(a) the defendant's liability, if any, is governed by the Carriage by Air Act 1974 ('the Act') and the First Schedule thereto which incorporates the Warsaw Convention, to the exclusion of common law;

(b) the defendant did not cause any damage to the damaged cargo as it was due to the plaintiff's faulty packaging of the consignment; and

(c) the consignee is the only person entitled to issue the notice.

[7] In essence, Mr Saw Lip Hean of counsel for the plaintiff supported the JC's decision as legally correct.

[8] The issues raised in the above submissions may be crystallised into three questions for determination viz:

(a) does the Act read with the Warsaw Convention apply to the facts herein, to the exclusion of common law, more specifically common law causes of action? This is a question of law;

(b) whether the defendant or defendant's agent had caused the damage to the damaged cargo? This is a question of fact; and

(c) does the plaintiff have the right to issue the notice? This is a question of law.

THE GOVERNING LAW

[9] In considering this question of law, we are of the view that in relation to the transaction herein, the governing law is the Act read with the Warsaw Convention which has been incorporated as the First Schedule thereto (a reference hereinafter to a section is a reference to that section in the Act). The Warsaw Convention has the force of law under s 3(1) which merits reproduction as follows:

Convention to have force of law

3. (1) Subject to this section, the *provisions of the Convention shall*, so far as they relate to the rights and liabilities of carriers, carriers' servants and agents, passengers, consignors, consignees and other persons, and subject to the provisions of this Act, *have the force of law in Malaysia* in relation to any carriage by air to which the Convention applies, irrespective of the nationality of the aircraft performing that carriage. (Emphasis added.)

[10] The carriage of the cargo from KLIA to Japan is an international carriage by air within the definition of article 1(2). By virtue of s 3(1), the provisions of the international law contained in the Warsaw Convention shall regulate the rights and liabilities of the plaintiff and the defendant. The carriage comprises the journey during which the cargo was delivered to the defendant's agent for upliftment onboard the defendant's flight until its arrival at the destination to which the cargo was intended ie Japan.

[11] The answer to this question of law calls for a construction of the governing law, in particular the Warsaw Convention. For the purpose of construing the provisions of the Warsaw Convention as an integral part of international law, we derive invaluable inspirations from other jurisdictions. Lord Hope of Craighead illuminated the judicial trend in *Morris v KLM Royal Dutch Airlines* [2002] 2 AC 628 at p 657 [81] (HL) in the following passage:

[81] In an ideal world the Convention should be accorded the same meaning by all who are party to it. So case law provides a further potential source of evidence. Careful consideration needs to be given to the reasoning of courts of other jurisdictions which have been called upon to deal with the point in issue, particularly those which are of high standing. Considerable weight should be given to an interpretation which has received general acceptance in other jurisdictions. On the other hand a discriminating approach is required if the decisions conflict, or if there is no clear agreement between them.

[12] With particular reference to the application of the governing law vis a vis the local law and common law causes of action, we are mindful of the decision of the House of Lords in *Sidhu and Others v British Airways plc* [1997] 1 All ER 193, which held, inter alia, that where a case falls within the terms of the (UK) Carriage by Air Act 1961, the common law causes of action are all displaced. There, the same law lord, Lord Hope of Craighead, explained that whilst it is tempting to give way to the argument that where there is a wrong there must be a remedy, the domestic courts are not free to prescribe a remedy according to the local law because this would undermine the Warsaw Convention. The enlightening headnote there reads:

A Held-Having regard to the objects and structure of the convention, which was to achieve a uniform international code in those area with which it dealt, including the liability of the international carrier, which could be applied by all High Contracting Parties without reference to the rules of their own domestic law, Sch 1 provides the exclusive cause of action and sole remedy for a passenger who claimed for loss, injury
B and damage sustained in the course of, or arising out of, international carriage by air notwithstanding that that might leave claimants without a proper remedy. Accordingly, where the convention did not provide a remedy, no remedy was available.

C

[13] Substantially similar sentiments have also been expressed in:

(a) *Re Deep Vein Thrombosis and Air Travel Group Litigation* [2003] 1 All ER 935 at p 936 (QBD) per Nelson J, at Held (2);

D (b) *Western Digital Corpn v British Airways Plc* [2001] QB 733 at pp748–750 (CA) per Mance LJ; and

(c) *Rolls-Royce Plc v Heavylift-Volga-Dnepr Ltd* [2000] 1 Llyod's Rep 653 at p 657 at para [22] (QBD) per Morison J.

E

[14] The trite principle which may be gleaned from the aforesaid authorities is clear and unambiguous. It is this: In any carriage by air, the provisions of the Act read with the Warsaw Convention govern the transaction in question, to
F the exclusion of and without reference to the rules of the local law and common law more specifically common law causes of action. We therefore answer the above question of law in the affirmative.

WHO CAUSED THE DAMAGE?

G

[15] In relation to this question of fact, the JC had affirmed the finding of facts by the sessions court ie the defendant's agent had received the cargo which had been properly packed and stacked on a pallet. On the second day, 20 cartons were found to be crushed. Other relevant facts established at the trial
H had been alluded to above. These facts plainly point to the defendant's responsibility for the damage.

[16] Given the concurrent finding of facts by the two courts below, in the
I absence of any failure on the part of the learned trial judge relating to the judicial appreciation of the evidence adduced at the trial, or any indication that the trial court had acted against the weight of evidence, we are not inclined and would indeed decline to disturb that finding of facts. We answer this question of fact in the affirmative.

IS THE PLAINTIFF ENTITLED TO ISSUE THE NOTICE

[17] This question of law turns on the construction of the words 'the person entitled to delivery must complain to the carrier' in article 26(2). In our view, in the context of the carriage by air in the instant appeal, the person who 'must complain to the carrier' is 'the person entitled to delivery'. This person who is entitled to delivery is the person who is entitled to lodge the complaint. Such person is either the consignor ie the plaintiff who has entrusted the cargo to the defendant's agent, or, alternatively, the consignee who has ordered the cargo from the plaintiff. The consignor and the consignee are the persons who share a common or corresponding entitlement to delivery. The consignor is the sender of goods, while the consignee is the recipient. The critically important question is: who has sustained loss, injury or damage as a result of the delivery of the damaged cargo. Such person must perforce to be an aggrieved person. The facts are clear in that the consignor, the plaintiff, had sustained loss and hence is an aggrieved person since the plaintiff could only bill the consignee in Japan for ten intact cartons instead of the entire 30 cartons ie the cargo which was the subject matter of the consignment. The plaintiff's loss arising from the damaged cargo certainly gave rise to the plaintiff's entitlement to complain and issue the notice under article 26(2). Our construction of the expression 'the person entitled to delivery' is consistent with commercial sense and reflects a practical, pragmatic and sound commercial reality. It would have defied logic were it otherwise. Hence, our answer to this question of law is in the affirmative.

EXTENT OF THE DEFENDANT'S LIABILITY

[18] The final issue raised for the defendant was that under article 22(2)(a) read with the Carriage by Air (Ringgit Equivalent) Order 1978, the plaintiff's claim, if any, is limited to a sum of RM48 per kg and for 2,300kg of the damaged cargo, the defendant's liability is capped at the total amount of RM110,400.

[19] The plaintiff responded that the limit under the Warsaw Convention is inapplicable.

[20] The question for determination under this head is:

> Upon a true construction of article 22(2)(a) read with the Carriage By Air (Ringgit Equivalent) Order 1978, is the plaintiff's claim limited to RM48 per kg?

[21] In our view, there is merit in this issue. The defendant's liability as a carrier is governed by article 22(2)(a) which reads:

(2) (a) In the carriage of registered baggage and of cargo, *the liability of the carrier is limited to a sum of two hundred and fifty francs per kilogramme*, unless the passenger or consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the passenger's or consignor's actual interest in delivery at destination.

[22] Under article 22(2)(a), in the case of the carriage of registered cargo, the carrier's (the defendant's) liability is limited to a sum of 250 francs per kg unless the consignor has made, at the time when the consignment was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In the instant appeal, the plaintiff did not make any special declaration of interest. In the absence of a 'special declaration of interest in delivery at destination' under article 22(2)(a), there is no basis to invoke the second limb thereof which provides for an exception to the general rule governing the limit of the carrier's liability under article 22(2)(a): *Wai Wah Enterprises & Eastern Watch Co Pte Ltd v China Airlines Ltd* [1986] 2 MLJ 269 Singapore HC per Lai Kew Chai J. The defendant's liability in the instant appeal is therefore regulated by the limit prescribed in the first limb of article 22(2)(a).

[23] Within our shores, article 22(2)(a) was judicially considered in *N Balasingam v Singapore Airlines Ltd & Anor* [1993] 1 CLJ 67 (HC). There, according to the plaintiff, he had handed in a manuscript, 'The Theory of Flight', to the defendant's agent, declaring its value at RM140,000, to be carried by the third party, as first carrier, to Singapore, and from there, by the defendant. The manuscript was uplifted from Ipoh on MH 161 on 6 August 1979, for onward transhipment to London. The defendant's agent agreed that the plaintiff had handed over a parcel to him. But he claimed that after the airway bill had been signed and RM305.17 (for insurance premium, airfreight and service charges), had been collected, he had told the plaintiff to get the KPW3 form, which was required for exports exceeding RM5,000, from the bank. The plaintiff had then left with the manuscript, later coming back to get the airway bill, claiming that the bank needed to put their stamp on the airway bill to state that KPW3 form had been declared. He was supposed to have returned in the afternoon, but had not done so. The defendant's agent claimed that he did not book the cargo space on the third party's aircraft. An officer of the third party claimed that the plaintiff had tried to send a parcel by MH 161, an earlier flight, instead of that as scheduled, by MH 125, but had been told he could not do so, though the cargo manifest of MH 161 showed that the parcel had been uplifted. Abdul Malek Ahmad J (later PCA) held:

(a) the defendant was not liable. The manuscript was not sent through the defendant's agent. The plaintiff had sent the manuscript himself;

(b) the third party too was not liable. There was no concluded contract between the plaintiff and the defendant from which the third party could be held liable, and there was no evidence how the cargo was included in the MH 161 manifest; and

(c) if, however, the defendant or third party were to be liable, the plaintiff's claim will be governed by the Carriage by Air Act 1974, and he would be entitled to RM96, as there was no evidence that a supplementary sum, as required by the Act if the declared sum is to become payable, had in fact been paid.

[24] Held (3) of the aforesaid judgment of the High Court is of singular significance in relation to the instant appeal. Although the judicial view expressed therein is merely an obiter dictum as the defendant and the third party therein had been held not liable, it is nevertheless of immense importance to the question under consideration herein. The obiter dictum clarifies the cap under article 22(2)(a) which expressly provides for the limit of the carrier's liability, if established. We are in entire agreement with the obiter dictum which reflects the correct construction to be applied to article 22(2)(a) read with the Carriage by Air (Ringgit Equivalent) Order 1978.

[25] Reverting to the mainstream of this appeal, we note that under the Carriage by Air (Ringgit Equivalent) Order 1978, the sum of 250 francs per kg has been fixed at RM48. Under article 22(2)(a), the defendant's liability is limited to the sum of RM110,400 only in respect of the cargo weighing 2,300kg, computed below:

2,300kg x RM48 per kg = RM110,400.

[26] With the utmost respect, the JC had erred in omitting to consider or invoke article 22(2)(a) and had erred in affirming the sum of RM198,144.16 awarded by the sessions court. This omission to invoke article 22(2)(a) is a non-direction amounting to a misdirection, thereby occasioning a miscarriage of justice warranting appellate intervention which we hereby do. Our answer to the above question is in the affirmative.

CONCLUSION

[27] For reasons adumbrated above, we allow this appeal in part, set aside the aforesaid order of the High and substitute it with a sum of RM110,400 with interest from the date of the sessions court judgment to the date of realisation.

[28] As the instant appeal is only allowed in part, the position of the parties are actually put in equilibrium. Hence, we make no order as to costs here and in the High Court.

[29] Deposit to be refunded to the defendant (the appellant).

Appeal allowed in part with no order as to costs.

Reported by Kohila Nesan